

**ACTION:** Notice of Emergency Rulemaking

**SUBJECT:** Drinking Water Treatment and Distribution System Classification and Operator Certification (R-40-00E)

**PUBLIC PROCEEDINGS:** Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the Office of Regulations, Department of Health Services, 714 P Street, Room 1000, P.O. Box 942732, Sacramento, CA 94234-7320, by 5 p.m. on February 26, 2001, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Comments by FAX (916-657-1459) or email ([regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov)) must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

**CONTACT:** Inquiries concerning the action described in this notice may be directed to Charles E. Smith of the Office of Regulations at (916) 657-0730 (Designated Backup Contact: Allison Branscombe at 657-0692). Inquiries regarding the substance of the regulations may be directed to Paul Gilbert-Snyder of the Division of Drinking Water & Environmental Management at (510) 540-2192. In any such inquiries, please identify the action by using the Department regulation control number **R-40-00E**.

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:** All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Water Act (sections 116270-116751, Health and Safety Code [H&S Code]). In

1999, the EPA published guidance (Federal Register 64 (24), 5916-5921, February 5, 1999), as required by the Safe Drinking Water Act Amendments of 1996, that established minimum requirements for state operator certification programs. Additionally, in 1999 California enacted legislation (Chapter 755, Statutes of 1999) that amended the H&S Code (sections 106875, et seq.) to conform to the federal statute and guidelines.

The Department's previous operator certification program (Title 17, Chapter 5, sections 7104 through 7134 of the California Code of Regulations (CCR)) was initially adopted in 1973 and had not been substantively changed since that time. It was out-dated and did not adequately address the requirements of modern treatment facilities. The operator certification program presented in sections 7104 through 7134 of the CCR did not meet the new requirements specified in the federal guidelines or the H&S Code.

Pursuant to federal guideline requirements and H&S Code sections 106875 et. seq., the Department has adopted regulations that expand the certification program to distribution system operators and ensure that all treatment facilities and distribution systems are classified consistent with federal guidance. The new operator certification regulations have been added to Title 22 of the CCR to maintain consistency with other drinking water regulations.

The Department has repealed sections 7104 through 7134 in Title 17, CCR. The Department has revised Title 22, Division 4, CCR, by adding, pursuant to federal requirements, Chapter 13, Operator Certification, and revising Chapter 15, Domestic Water Quality and Monitoring. The following summarizes the changes in Title 22:

#### CHAPTER 13, Operator Certification

- ARTICLE 1, Definitions

Adopted sections 63750.10 through 63750.85 in order to define and clarify terminology that is used throughout this chapter.

- ARTICLE 2, Operator Certification Grades

- Adopted new Section 63765. Water Treatment Facility Staff Certification Requirements.
- Adopted new Section 63770. Distribution System Staff Certification Requirements.

- ARTICLE 3, Operator Examination Criteria and Applications

- Adopted new Section 63775. Eligibility Criteria for Taking a Water Treatment Operator Examination.
- Adopted new Section 63780. Eligibility Criteria for Taking a Distribution Operator Examination.
- Adopted new Section 63785. Examination Application Content and Submittal.
- Adopted new Section 63790. Examination Scheduling and Application Processing.

- Adopted new Section 63795. Examination Application Resubmittals and Reexaminations.
- ARTICLE 4, Operator Certification Criteria and Applications
  - Adopted new Section 63800. Eligibility Criteria for Water Treatment Operator Certification.
  - Adopted new Section 63805. Eligibility Criteria for Distribution Operator Certification.
  - Adopted new Section 63810. Interim Certification of Distribution Operators.
  - Adopted new Section 63815. CNAWWA Distribution Operator Certification.
  - Adopted new Section 63820. Temporary Distribution Operator Certification.
  - Adopted new Section 63825. Restricted Operator Certification.
  - Adopted new Section 63830. Certification Application Content and Submittal.
  - Adopted new Section 63835. Certification and Renewal Application Processing.
- ARTICLE 5, Certification Renewals, Delinquent Renewals and Fees
  - Adopted new Section 63840. Certification Renewals.
  - Adopted new Section 63845. Reinstatement.
  - Adopted new Section 63850. Fees.

## CHAPTER 15, Domestic Water Quality and Monitoring

- ARTICLE 2. Definitions and General Requirements
  - Adopted new Section 64413.1 Classification of Water Treatment Facilities.
  - Adopted new Section 64413.3 Classification of Distribution Systems.
  - Adopted new Section 64413.5 Treatment Facility Staff Certification Requirements.
  - Adopted new Section 64413.7 Distribution System Staff Certification Requirements.

The net effect is that:

- Water treatment and distribution facilities are classified in a manner consistent with EPA guidelines.
- Water treatment and distribution facilities are operated and maintained by operators who are certified at the appropriate level, assuring the protection of public health and safety.
- Certified operators will receive on-going training to ensure that their knowledge of treatment, operations, and public health issues remains current.

Adoption of these regulations satisfies the federal guideline requirements and the H&S Code requirements.

AUTHORITY: Section 17520, Family Code; Sections 100275, 106910, and 116375, Health and Safety Code; and Section 15376, Government Code.

REFERENCE: Section 15376, Government Code; and Sections 106875, 106880, 106885, 106890, 106895, 106900, 106910, 116375, and 116555, Health and Safety Code.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: Total additional one-time costs for classifications of systems would be \$48,800.00.
- B. Fiscal Effect on State Government: Additional expenditures of approximately \$3,400.00.
- C. Fiscal Effect on Federal Funding of State Programs: Potential loss of \$17 million annually if not adopted.
- D. All Known Cost Impacts on Representative Private Person or Business: The average annual per operator cost to comply with the regulations would be \$68 (based on a five-year projection). Statewide, the aggregate annual cost of the regulations would be \$1,697,900 for incremental fees and continuing education costs.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code. However, if local agencies were to incur costs, those costs would be of the following nature:

First, some local agencies could incur costs in their operation of public water systems. These costs would not be the result of a “new program or higher level of service” within the meaning of Article XIIIB, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments. Therefore, no state reimbursement of these costs would be required.

Second, some local agencies could incur additional costs in discharging their responsibility to enforce the new regulations for the public water systems that they regulate. However, the Department has determined that any increase in the local agency costs resulting from enforcing this regulation would be insignificant. Furthermore, local agencies are authorized

to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems. (Health and Safety Code Section 101325) Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required. (Government Code Section 17556(d)).

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California. The regulatory action summarized above should not have any affect in this area, in that there would not be any significant change in water system or regulatory personnel needed for compliance with the new requirements.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the adoption of the regulations would not result in the creation or elimination of water systems. The impact of the regulations would be insignificant. The regulations would not have any affect on the number of businesses in California.
- (3) The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the regulations should not have any affect on expansion.

The Department has determined that the regulations would not affect small business because Government Code section 11342.610(b)(8) excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

**AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS:** The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations. Additionally, a copy of the final

statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at [http://www.dhs.ca.gov/ps/ddwem/publications/regulations/regulations\\_index.htm](http://www.dhs.ca.gov/ps/ddwem/publications/regulations/regulations_index.htm).

**AVAILABILITY OF CHANGED OR MODIFIED TEXT:** The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

**ADDITIONAL STATEMENTS AND COMMENTS:** In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

Sign language interpreting services at a public hearing or other reasonable accommodation will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period, and addressed to the Office of Civil Rights within the Department of Health Services by phone (916-657-1411); FAX (916-657-0153); TDD (916-657-2861); or email ([civilrights-ra@dhs.ca.gov](mailto:civilrights-ra@dhs.ca.gov)).

## DEPARTMENT OF HEALTH SERVICES

R-40-00E

Dated:

Diana M. Bontá, R.N., Dr.P.H.  
Director